

<sup>2</sup> The Board notes that appellant submitted additional evidence on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

### **FACTUAL HISTORY**

On September 2, 2017 appellant, then a 57-year-old rural carrier, filed a traumatic injury claim (Form CA-1) alleging that on that same date she was bitten by a dog on her left upper arm while in the performance of duty. She stopped work on September 2, 2017 and received continuation of pay through October 17, 2017. OWCP initially accepted her claim for open bite of the left forearm, and subsequently expanded the claim to include unspecified open wound of the right little finger and right small finger contracture. Beginning October 18, 2017, it paid appellant's wage-loss compensation for temporary total disability on the supplemental rolls. OWCP also authorized February 8 and June 14, 2018 right small finger surgical procedures, which were performed by Dr. William B. Kleinman, a Board-certified orthopedic surgeon. It continued to pay wage-loss compensation for temporary total disability in connection with appellant's authorized surgeries. Effective July 23, 2018, Dr. Kleinman released appellant to resume her full-time, regular-duty work without restrictions.

In a July 23, 2018 report, Dr. Kleinman noted he released appellant from his care with a 40 percent partial impairment of her right small finger.

On September 5, 2018 appellant filed a claim for a schedule award (Form CA-7).

In a development letter dated September 11, 2018, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).<sup>3</sup> It indicated that Dr. Kleinman's July 23, 2018 report was insufficient to support her claim for a schedule award because he had not provided a final impairment rating with a discussion of the rationale for calculation with references to tables in the A.M.A., *Guides*. OWCP further noted that if her physician was unable or unwilling to provide the required report she should advise it in writing and if the case met the essential elements for a schedule award, and the medical evidence of record was insufficient to determine permanent impairment, they would refer her to a second opinion physician. It afforded her 30 days to submit the necessary evidence.

In a September 20, 2018 note, Dr. Kleinman advised that he did not work with the sixth edition of the A.M.A., *Guides*. He recommended that appellant be referred to a physical therapist for an impairment rating and once the report was received he would review the findings.

By a decision dated December 6, 2018, OWCP denied appellant's claim for a schedule award.

---

<sup>3</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

## **LEGAL PRECEDENT**

The schedule award provisions of FECA<sup>4</sup> and its implementing regulations<sup>5</sup> set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage of loss of a member shall be determined. For consistent results and to ensure equal justice under the law for all claimants, OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants and the Board has concurred in such adoption.<sup>6</sup> As of May 1, 2009, the sixth edition of the A.M.A., *Guides*, published in 2009, is used to calculate schedule awards.<sup>7</sup>

In addressing impairment for the upper extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the upper extremity to be rated.<sup>8</sup> After a class of diagnosis (CDX) is determined (including identification of a default grade value), the impairment class is then adjusted by grade modifiers based on functional history (GMFH), physical examination (GMPE), and clinical studies (GMCS).<sup>9</sup> The net adjustment formula is (GMFH – CDX) + (GMPE – CDX) + (GMCS – CDX).<sup>10</sup>

OWCP procedures provide that, after obtaining all necessary medical evidence, the file should be routed to OWCP's DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.<sup>11</sup>

## **ANALYSIS**

The Board finds that appellant has not met her burden of proof to establish entitlement permanent impairment of her bilateral upper extremities, warranting a schedule award.

In his July 23, 2018 report, Dr. Kleinman noted that appellant had 40 percent impairment of the right small finger. He returned her to full activities without restriction. However,

---

<sup>4</sup> 5 U.S.C. § 8107.

<sup>5</sup> 20 C.F.R. § 10.404.

<sup>6</sup> *Id.* at 10.404(a); *see also Jacqueline S. Harris*, 54 ECAB 139 (2002).

<sup>7</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.5(a) (March 2017); *see also* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700.2 and Exhibit 1 (January 2010).

<sup>8</sup> *T.T.*, Docket No. 18-1622 (issued May 14, 2019).

<sup>9</sup> A.M.A., *Guides* 383-492; *see M.P.*, Docket No. 13-2087 (issued April 8, 2014).

<sup>10</sup> *Id.* at 411.

<sup>11</sup> *See* Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Awards and Permanent Disability Claims*, Chapter 2.808.6; *R.M.*, Docket No. 18-1313 (issued April 11, 2019); *C.K.*, Docket No. 09-2371 (issued August 18, 2010).

Dr. Kleinman did not adequately explain how his determination was reached in accordance with the relevant standards of the A.M.A., *Guides*.<sup>12</sup> In his report, he provided no findings on examination or a diagnosis. Although Dr. Kleinman noted that appellant sustained 40 percent impairment of the right small finger he failed to provide his calculations in support of this determination. Additionally, he did not cite to tables or charts for an impairment rating determination. Therefore, the Board finds that Dr. Kleinman did not properly follow the A.M.A., *Guides*, and an attending physician's report is of little probative value where the A.M.A., *Guides* were not properly followed.<sup>13</sup>

In a development letter dated September 11, 2018, OWCP requested that appellant submit an impairment evaluation from her attending physician in accordance with the sixth edition of the A.M.A., *Guides*.<sup>14</sup> It further noted that if her physician was unable or unwilling to provide the required report to advise it in writing, and if the case met the essential elements for a schedule award and the medical evidence of record was insufficient to determine permanent impairment, they would refer her to a second opinion physician. Appellant did not submit a medical report that specifically addressed the criteria for rating purposes, nor did she notify OWCP that her physician was unable or unwilling to provide an impairment rating pursuant to the sixth edition of the A.M.A., *Guides*.

The Board finds that there is no medical evidence of record utilizing the appropriate tables of the sixth edition of the A.M.A., *Guides* demonstrating permanent impairment. OWCP explained that Dr. Kleinman's rating of 40 percent permanent impairment was erroneous under the A.M.A., *Guides* because he failed to properly assign a class or grade modifiers in his calculations. The Board has held that when the attending physician fails to provide an estimate of impairment conforming to the A.M.A., *Guides*, or does not discuss how he arrives at the degree of impairment based on physical findings, his or her opinion is of diminished probative value in establishing the degree of impairment.<sup>15</sup>

There is no probative medical evidence of record, in conformance with the sixth edition of the A.M.A., *Guides*, establishing that appellant has permanent impairment of the bilateral upper extremities.

Appellant may request a schedule award or increased schedule award at any time based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

---

<sup>12</sup> See *Tonya R. Bell*, 43 ECAB 845, 849 (1992).

<sup>13</sup> See *Paul R. Evans, Jr.*, 44 ECAB 646 (1993); *John Constantin*, 39 ECAB 1090 (1988) (medical report not explaining how the A.M.A., *Guides* are utilized is of little probative value).

<sup>14</sup> A.M.A., *Guides* (6<sup>th</sup> ed. 2009).

<sup>15</sup> *Supra* note 13.

**CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish permanent impairment of her bilateral upper extremities, warranting a schedule award.

**ORDER**

**IT IS HEREBY ORDERED THAT** the December 6, 2018 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: September 20, 2019  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board